

11.01.2022
(S/L-09)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 3915 of 2019

Sri Anil Swarnakar @ Anil Kumar Swarnakar
-Vs-
Smt. Minoti Swarnakar & Ors.

Mr. Krishnendu Sarkar,
.... For the Petitioner.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,

.... For the Opposite Parties.

The revisional application under Article 227 of the Constitution is at the instance of the plaintiff in a suit for recovery of possession which is directed against order dated August 22, 2019 passed by the Additional Court of learned Civil Judge (Junior Division), Nadia in the said suit being Title Suit No. 816 of 2013.

The plaintiff is tracing his title over the suit property through a deed of gift. The petitioner on August 03, 2019 filed an application praying marking of the said deed of gift on the basis of the evidence already adduced by one of the scribes of the said deed, named Mohsin Sk.

The learned Trial Judge by the order impugned has dismissed the said application holding that no genuine attempt was made by

the plaintiff in securing attendance of at least one of the attesting witnesses of the said deed.

Mr. Krishnendu Sarkar Learned advocate for the petitioner submits that both the attesting witnesses of the said deed are dead and one of the scribes of it is not traceable, the plaintiff under such circumstances wanted to prove the valid execution of the said deed of gift through the other scribe of the said deed and since the said scribe has already adduced evidence in the suit satisfying the requirement of Section 69 of the Indian Evidence Act 1872, the plaintiff prayed for marking of the said deed, the learned trial judge under the facts and circumstances of the case is not justified in dismissing the said application.

Mr. Partha Pratim Roy learned advocate for the opposite parties submits that the evidence of Mohsin Sk is not on record as such it is not clear, whether the evidence of the said witness is sufficient for the purpose of marking the said deed.

Heard the learned advocate for the parties and perused the materials on record. The death certificates annexed with the revisional application unmistakably suggest death of both the attesting witnesses of the said deed. Under such circumstances, the plaintiff can take

recourse of Section 69 of the Indian Evidence Act, 1872 to prove the valid execution of the said deed through one of the scribes of it.

Mohsin Sk being one of the scribes of the said deed can prove the execution of the said deed subject to fulfillment of the requirements of Section 69 of the Indian Evidence Act 1872.

The attesting witnesses of the said deed are dead as such the dismissal of the said application for not taking steps to prove the execution of the said deed through the said witnesses is absolutely absurd. The order impugned therefore is not sustainable and is accordingly set aside.

The learned Trial Judge is requested to decide the said application afresh in accordance with law on the basis of the evidence adduced by the said Mohsin Sk and if his evidence satisfies the requirement of Section 69 of the Indian Evidence Act, 1872, the learned trial judge shall pass necessary orders on the said application.

C.O. 3915 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)